

Exhibit 1

Nov. 7, 2017 Letter from A. Taylor to S. Pezzi



November 7, 2017

Stephen Pezzi
Trial Attorney
United States Department of Justice
Civil Division - Federal Programs Branch
20 Massachusetts Avenue NW
Washington, DC 20530

Re: *Batalla Vidal et al. v. Duke et al.*,
No. 1:16-cv-04756 (NGG) (JO) (EDNY)

Dear Mr. Pezzi,

The *Batalla Vidal* Plaintiffs recently learned that thirteen DACA renewal applications prepared by Make the Road New York (MRNY) and its sister organization, Make the Road New Jersey (MRNJ), were improperly rejected by USCIS as untimely despite USCIS receiving the majority of these applications by the October 5, 2017 deadline. *See* Appendix A (providing details on each application). We write to request that Defendants reconsider their improper rejection of these applications. The rejections violate the due process rights of Plaintiffs and these putative class members on the grounds that: (1) none of these individuals received proper notice of the October 5th deadline, and (2) the deadline itself was arbitrary and capricious. If the parties cannot resolve this issue, Plaintiffs will have no choice but to seek assistance of the Court. We write first to confer regarding the disposition of these thirteen applications and to determine whether the parties can reach agreement regarding the appropriate processing of these applications without need for court intervention.

The imposition of the October 5th deadline was arbitrary and capricious and as such, burdensome to both DACA recipients and immigration legal service providers across the country. Because of the unfairly short timeline for renewal announced on September 5, 2017, many DACA recipients filed renewal applications before the October 5th deadline but, through no fault of their own, had their applications rejected by USCIS. These rejections have already caused significant harm to the individuals and their families, employers, and communities at large. *See* Appendix A.

BROOKLYN
301 GROVE STREET
BROOKLYN, NY 11237
TEL 718 418 7690
FAX 718 418 9635

QUEENS
92-10 ROOSEVELT AVENUE
JACKSON HEIGHTS, NY 11372
TEL 718 565 8500
FAX 718 565 0646

STATEN ISLAND
161 PORT RICHMOND AVENUE
STATEN ISLAND, NY 10302
TEL 718 727 1222
FAX 718 981 8077

LONG ISLAND
1090 SUFFOLK AVENUE
BRENTWOOD, NY 11717
TEL 631 231 2220
FAX 631 231 2229

The October 5th deadline was unreasonably burdensome to plaintiff Make the Road New York, whose core legal services include counseling and application assistance for thousands of DACA recipients. Though the USCIS Chicago Lockbox, a P.O. box, received most of the twelve DACA renewal applications by October 5, 2017, they were still wrongfully rejected as untimely. *See* Exhibits A (USPS tracking information for a package containing seven DACA renewal applications) and B (USPS tracking information for a package containing one DACA renewal application).

Moreover, the DACA Termination Memo itself stated only that the deadline was October 5th, without a specific time designated. However, USCIS apparently rejected applications received after 6pm on that date, without sharing prior notice of a cutoff time on October 5 with the public, including DACA recipients and organizations like MRNY, in any way. *See* Appendix A (including 9 applications received after 6pm on October 5th, which were rejected as untimely).

As you are aware, Judge Garaufis expressed concern regarding the arbitrariness of the October 5th deadline on September 14, 2017:

I'm more concerned about the October 5th deadline in terms of how it might prejudice the rights of certain persons who are already covered by the DACA certificates and permits, work permits and so on that have already been issued. . . If you are living in Oregon or Michigan or Vermont, you don't have a problem with the hurricane, you've got a problem with the fact that based on this deadline you may be preempted from making an application to extend the benefit that you received under DACA. (Sept. 14, 2017 Tr. at 11:9-19.)

Plaintiffs have previously raised concerns regarding the lack of notice for individuals impacted by the October 5th deadline to the Court. *See* Sept. 14, 2017 Tr. at 14-15 (8-25, 1-3). None of the individuals named below received notices informing them of the October 5th deadline prior to October 5, 2017. In fact, many of these individuals received only a standard renewal notice sent by USCIS directing them to submit a renewal application "as soon as possible," by submitting the renewal application 120 to 150 days before expiration. Acting Secretary Duke's Memorandum on Rescission of Deferred Action for Childhood Arrivals (DACA) ("DACA Termination Memo") issued on September 5, 2017 was never sent to any of these individuals, nor was any other notice sent correcting the prior, standard notice or informing DACA recipients of the new date or time established as a deadline. Thus, Defendants did not provide these individuals adequate notice of the abrupt change in policy regarding the required timing of the submission of their DACA renewal applications.

Before seeking relief from the court, we seek to confer with Defendants in an effort to resolve this issue. We respectfully request that USCIS reconsider the applications below. If we do not hear back from you by close of business on Monday, November 13th, we will take further action to seek relief for these individuals. Please let us know if you would like to discuss this request.

Respectfully,



David Chen, Law Student Intern
Susanna D. Evarts, Law Student
Intern
Healy Ko, Law Student Intern
Victoria Roeck, Law Student Intern
Hannah Schoen, Law Student Intern
Emily Villano, Law Student Intern
Muneer I. Ahmad, Esq.
Marisol Orihuela, Esq.
Michael J. Wishnie, Esq.
Jerome N. Frank Legal Svcs. Org.
michael.wishnie@yale.edu
Phone: (203) 432-4800

Amy S. Taylor, Esq.
Deborah Axt, Esq.
Scott Foletta, Esq.
Alexia Schapira, Esq.
Make The Road New York
301 Grove Street
Brooklyn, NY 11237
Phone: (718) 418-7690

Jessica R. Hanson, Esq.
Mayra B. Joachin, Esq.
Melissa Keaney, Esq.
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Joshua A. Rosenthal, Esq.
National Immigration Law Center
3450 Wilshire Blvd, #108-62
Los Angeles, CA 90010
Phone: (213) 639-3900
Attorneys for Batalla Vidal Plaintiffs

Exhibit 2

Nov. 7, 2017 Email Chain

From: [Scott Foletta](#)
To: [Pezzi, Stephen \(CIV\)](#)
Cc: [Amy Taylor](#); [Batalla](#); [Batalla](#); [yale.edu](#); [Rosenberg, Brad \(CIV\)](#); [Bailey, Kate \(CIV\)](#); [Marutollo, Joseph \(USANYE\)](#)
Subject: Re: Batalla Vidal Letter to Defendants
Date: Tuesday, November 07, 2017 5:57:02 PM
Attachments: [Appendix A.pdf](#)
[Exhibit A.pdf](#)
[Exhibit B - Jose Huitzil.pdf](#)
[Exhibit C - Marcelo Reyes.pdf](#)
[Exhibit D - Andrea Diaz.pdf](#)
[Exhibit E - Jonathan Marin.pdf](#)

Hello Mr. Pezzi,

Apologies, the exhibits are attached, as well as a corrected Appendix A with all 13 clients.

Scott Foletta

On Tue, Nov 7, 2017 at 5:03 PM, Pezzi, Stephen (CIV) <Stephen.Pezzi@usdoj.gov> wrote:

Ms. Taylor,

One question: the letter references an Appendix A (which is attached) but also two exhibits (which appear to be missing). Is the attached letter all of the information you intended to send me? Or is there more?

Thanks,

Stephen M. Pezzi

Trial Attorney

United States Department of Justice

Civil Division - Federal Programs Branch

20 Massachusetts Avenue NW

Washington, DC 20530

[\(202\) 305-8576](tel:(202)305-8576) | stephen.pezzi@usdoj.gov

From: Pezzi, Stephen (CIV)

Sent: Tuesday, November 07, 2017 4:35 PM

To: 'Amy Taylor' <amy.taylor@maketheroadny.org>

Cc: Batalla <Batalla@maketheroadny.org>; Batalla <Batalla@nilc.org>; yale.edu <BatallaVidal_LSO@mailman.yale.edu>; Rosenberg, Brad (CIV) <BRosenbe@civ.usdoj.gov>; Bailey, Kate (CIV) <katbaile@CIV.USDOJ.GOV>

Subject: RE: Batalla Vidal Letter to Defendants

Ms. Taylor,

Thank you for your letter. I will confer with my clients and get a response to you as soon as I am able.

Best,

Stephen M. Pezzi

Trial Attorney

United States Department of Justice

Civil Division - Federal Programs Branch

20 Massachusetts Avenue NW

Washington, DC 20530

[\(202\) 305-8576](tel:2023058576) | stephen.pezzi@usdoj.gov

From: Amy Taylor [<mailto:amy.taylor@maketheroadny.org>]

Sent: Tuesday, November 07, 2017 4:09 PM

To: Pezzi, Stephen (CIV) <spezzi@CIV.USDOJ.GOV>

Cc: Batalla <Batalla@maketheroadny.org>; Batalla <Batalla@nilc.org>; yale.edu <BatallaVidal_LSO@mailman.yale.edu>

Subject: Batalla Vidal Letter to Defendants

Dear Mr. Pezzi,

Please see the attached letter from the Batalla Vidal plaintiffs regarding thirteen individuals with rejected DACA renewal applications. We hope to hear your response soon and look forward to discussing.

Best,

Amy

Amy S. Taylor

Legal Director

Make the Road New York
301 Grove Street

Brooklyn, NY 11237

Tel: [718.418.7690](tel:718.418.7690) x1280

Cell: [917.684.6523](tel:917.684.6523)

Email: amy.taylor@maketheroadny.org

www.maketheroadny.org

pronouns: She/Her/Ella

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www.maketheroadny.org/gala

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Scott Foletta

Staff Attorney

Make the Road New York

Pronouns: He, him, él

92-10 Roosevelt Ave.

Jackson Heights, NY 11372

Phone: (929) 244-3456

Fax: (718) 981-8077

scott.foletta@maketheroadny.org

Exhibit 3

Nov. 10-11, 2017 Email Chain

From: [Pezzi, Stephen \(CIV\)](#)
To: [Emily Villano](#); [David Chen](#)
Cc: [Batalla](#); [Amy Taylor](#); [Rosenberg, Brad \(CIV\)](#); [Batalla](#); [yale.edu](#); [Bailey, Kate \(CIV\)](#); [Marutollo, Joseph \(USANYE\)](#); [Scott Foletta](#)
Subject: Re: [Batallavidal_Iso] Batalla Vidal v. Duke, 16-cv-04756 (NGG) (JO)
Date: Saturday, November 11, 2017 2:43:05 PM

Ms. Villano,

I appreciate that. We will be in touch on Monday. Enjoy the rest of your weekend.

Best,
Steve

Sent from my Verizon, Samsung Galaxy smartphone

----- Original message -----

From: Emily Villano <emily.villano@ylsclinics.org>
Date: 11/11/17 2:00 PM (GMT-05:00)
To: "Pezzi, Stephen (CIV)" <spezzi@CIV.USDOJ.GOV>, David Chen <d.chen@ylsclinics.org>
Cc: Batalla <Batalla@nilc.org>, Amy Taylor <amy.taylor@maketheroadny.org>, "Rosenberg, Brad (CIV)" <BRosenbe@civ.usdoj.gov>, Batalla <Batalla@maketheroadny.org>, "yale.edu" <BatallaVidal_LSO@mailman.yale.edu>, "Bailey, Kate (CIV)" <katbaile@CIV.USDOJ.GOV>, "Marutollo, Joseph (USANYE)" <Joseph.Marutollo@usdoj.gov>, Scott Foletta <scott.foletta@maketheroadny.org>
Subject: Re: [Batallavidal_Iso] Batalla Vidal v. Duke, 16-cv-04756 (NGG) (JO)

Dear Mr. Pezzi,

We will delay filing until COB Monday and look forward to your response before that time.

Sincerely,
Emily

--

Emily Villano
Law Student Intern
Jerome N. Frank Legal Services Organization
Yale Law School

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From: batallavidal_Iso-bounces@mailman.yale.edu <batallavidal_Iso-bounces@mailman.yale.edu>
on behalf of Pezzi, Stephen (CIV) <Stephen.Pezzi@usdoj.gov>
Sent: Saturday, November 11, 2017 10:44:32 AM
To: David Chen

Cc: Batalla; Amy Taylor; Rosenberg, Brad (CIV); Batalla; yale.edu; Bailey, Kate (CIV); Marutollo, Joseph (USANYE); Scott Foletta

Subject: Re: [Batallavidal_Iso] Batalla Vidal v. Duke, 16-cv-04756 (NGG) (JO)

Dear Mr. Chen,

Thank you for your email. Ms. Taylor's letter of November 7 (attached) said that you would seek relief from the Court if you did not receive a response by close of business on Monday, November 13. I responded by email immediately, and told you that we would get you a response as soon as we were able to do so. Yesterday evening, after business hours on a Friday (and on a federal holiday), you let us know that you intended to file something this weekend. Although we have been working diligently to get the necessary information from our client to investigate and evaluate the assertions you made in your letter, that process is ongoing, and we will need (at least) until COB Monday to offer you a meaningful response – a response that might potentially obviate the need for any additional litigation at all. I see no reason why your letter cannot wait until (at least) Monday. That way, we can actually attempt to confer in good faith and address the issues raised in your letter, and see whether some common ground is possible before moving directly into additional litigation. We would also ask to see any proposed third amended complaint before we decide whether to oppose its filing.

That said, if you insist on filing something before your own originally imposed deadline of COB Monday, and before we have had a chance to respond to your letter, please report our position as follows: "Defendants oppose as premature Plaintiffs' request for a pre-motion conference, on the basis that Plaintiffs have not provided sufficient information or sufficient time for Defendants to offer a substantive response, and because Plaintiffs represented to Defendants that they did not intend to seek relief from the Court until close of business on Monday, November 13, at the earliest."

Best regards,

Stephen M. Pezzi

Trial Attorney

United States Department of Justice

Civil Division - Federal Programs Branch

20 Massachusetts Avenue NW

Washington, DC 20530

(202) 305-8576 | stephen.pezzi@usdoj.gov

From: David Chen [mailto:d.chen@ylsclinics.org]

Sent: Friday, November 10, 2017 7:13 PM

To: Pezzi, Stephen (CIV) <spezzi@CIV.USDOJ.GOV>

Cc: Scott Foletta <scott.foletta@maketheroadny.org>; Batalla <Batalla@nilc.org>; Amy Taylor <amy.taylor@maketheroadny.org>; Rosenberg, Brad (CIV) <BRosenbe@civ.usdoj.gov>; Batalla <Batalla@maketheroadny.org>; yale.edu <BatallaVidal_LSO@mailman.yale.edu>; Bailey, Kate (CIV) <katbaile@CIV.USDOJ.GOV>; Marutollo, Joseph (USANYE) <Joseph.Marutollo@usdoj.gov>

Subject: Batalla Vidal v. Duke, 16-cv-04756 (NGG) (JO)

Counsel,

The Batalla Vidal plaintiffs plan to file a letter with the court requesting a pre-motion conference for next week, in anticipation of a motion for leave to amend our pleadings in order to raise the issue of renewal applications that were improperly denied by USCIS as untimely, which we raised in a letter to you earlier this week. We will also seek to clarify the briefing schedule with respect to class certification. We intend to file the letter over the weekend. Please let us know if you have any objection.

David Chen
Law Student Intern
Jerome N. Frank Legal Services Organization
d.chen@ylsclinics.org
908-240-6252

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Exhibit 4

Defendants' Nov. 13 Letter to Plaintiffs



U.S. Department of Justice
Civil Division, Federal Programs Branch
20 Massachusetts Avenue NW
Washington, DC 20530

November 13, 2017

VIA EMAIL

Amy S. Taylor, Esq.
Make The Road New York
301 Grove Street
Brooklyn, NY 11237
amy.taylor@maketheroadny.org

Re: *November 7, 2017 letter regarding E.D.N.Y. Case No. 16-cv-4756 (NGG) (JO)*

Dear Ms. Taylor:

Thank you for your November 7, 2017 letter regarding thirteen individual DACA renewal requests, Ex. 1, and your colleague Mr. Foletta's November 7, 2017 email providing additional factual information about certain of those requests, Ex. 2. Since the evening of November 7, we have been working diligently with our clients at the Department of Homeland Security (DHS) and United States Citizenship and Immigration Services (USCIS) to gather the relevant factual information to respond to your letter. That process is ongoing, but based on the information currently available to us, our response is as follows:

Your letter suggests that "USCIS apparently rejected applications received after 6pm on [October 5, 2017], without sharing prior notice of a cutoff time on October 5 with the public, including DACA recipients and organizations like MRNY, in any way." That assertion is inaccurate. In fact, USCIS applied a deadline of 11:59 PM on October 5, 2017 for receipt of DACA renewal requests. And the October 5, 2017 deadline was widely publicized.

Your letter also suggests that that "the majority" of the thirteen identified requests "were improperly rejected as untimely" despite USCIS receiving them "by the October 5, 2017 deadline." That assertion also appears to be inaccurate. In fact, USCIS has independently confirmed that twelve of the thirteen requests were rejected as untimely because they were received by USCIS after the 11:59 PM deadline on October 5, 2017. (One of the thirteen requests was initially rejected because it did not include the requestor's signature—separate and apart from any timeliness problem.¹) Indeed, the U.S. Postal Service tracking information that your colleague Mr. Foletta provided confirms that delivery was not complete until after the October 5, 2017 deadline—at least, as for all five of the requests for which such information was provided to us. *See, e.g.*, USPS Tracking Information for Marcelo Reyes Vargas ("status of item" was "delivered" as of "October 6, 2017, 3:30 pm"). This information that you provided contradicts the information you attached

¹ That request was submitted by Hagi Garcia Teliz. USCIS has always made clear that improper or incomplete DACA renewal requests will be rejected, and that a signature is required. *See* USCIS, Filing Tips, available at <https://www.uscis.gov/forms-filing-tips> ("Don't forget to sign your form! We will reject and return any unsigned form.").

in the chart labeled “Appendix A” to your letter. (You did not provide us with any USPS tracking information for eight of the requests.)

Finally, I will note that at least three of the requests listed in your letter unquestionably were received by USCIS after the October 5, 2017 deadline,² even accepting as accurate all of the information in your Appendix A.

In any event, notwithstanding the material factual inaccuracies in your letter, we remain open and willing to confer in good faith, in order to discuss the possibility of finding some common ground regarding the circumstances surrounding the application of the October 5, 2017 deadline to these particular requests, as well as to engage in a broader conversation about any similarly-situated requestors, in a way that might avoid (or at least limit) the need for additional litigation. We are actively discussing these issues with our clients, but need additional time to complete those conversations.

We are willing to have a further discussion about this subject later this week, by which time we hope to have additional clarity about whether further engagement on this issue is likely to be fruitful. Accordingly, we respectfully request that you hold off on any additional filings with the Court while this meet-and-confer process continues, as our efforts may allow for resolution of at least some of these issues, and short-circuiting those efforts prematurely will not be an efficient use of the parties’ or the Court’s time.

Thank you for bringing these issues to our attention. We will be in touch.

Sincerely,

CHAD A. READLER
Acting Assistant Attorney General

BRETT A. SHUMATE
Deputy Assistant Attorney General

/s/ Stephen M. Pezzi
STEPHEN M. PEZZI
Trial Attorney
United States Department of Justice
Civil Division, Federal Programs Branch
20 Massachusetts Ave., N.W.
Washington, DC 20530
Tel.: (202) 305-8576
Fax: (202) 616-8470
Email: stephen.pezzi@usdoj.gov

Counsel for Defendants

² Those three requests were submitted by Andrea Diaz Zamora, Jorge Gonzalez Alvarado, and Jonathan Marin Juarez.

Exhibit 5

Nov. 13-14, 2017 Email Chain

From: [Amy Taylor](#)
To: [Pezzi, Stephen \(CIV\)](#)
Cc: [Batalla; Batalla; yale.edu; David Chen; Emily Villano; Scott Foletta; Rosenberg, Brad \(CIV\); Bailey, Kate \(CIV\); Natalia Renta](#)
Subject: Re: EDNY Case No. 16-4756 - Response to November 7, 2017 Letter
Date: Tuesday, November 14, 2017 1:00:16 AM

Dear Mr. Pezzi,

We appreciate your efforts and thank you for your response. We are disappointed with your clients' refusal, however, to accept and adjudicate these renewal applications, and others like them. We do not agree that the relevant date is when USCIS *collected* renewal applications delivered to the lockbox address specified by USCIS, by the date announced by USCIS; nor that persons whose renewal applications were rejected prior to October 5 due to an alleged clerical error should be denied an opportunity to correct those errors; nor that persons who mailed their renewals well in advance of October 5, and who suffered unforeseeable delivery days due solely to postal error, should be denied consideration of their application. Because your clients refuse to adjudicate approximately 4,000 of these renewal applications, including those of more than a dozen MRNY members or clients, and because these 4,000 DACA recipients now face the imminent expiration of their DACA status, employment authorization, and ability to support themselves and their families, we have no choice but to seek relief from the court. We will begin with a request for a pre-motion conference as required by Judge Garaufis' chambers rules.

We are glad to continue to confer and will of course hope for an amicable resolution without need for full adjudication by the court.

Best,

Amy S. Taylor
Legal Director
Make the Road New York
301 Grove Street
Brooklyn, NY 11237
Tel: [718.418.7690](tel:718.418.7690) x1280
Cell: [917.684.6523](tel:917.684.6523)
Email: amy.taylor@maketheroadny.org
www.maketheroadny.org

pronouns: She/Her/Ella

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On Mon, Nov 13, 2017 at 6:02 PM, Pezzi, Stephen (CIV) <Stephen.Pezzi@usdoj.gov> wrote:

Dear Ms. Taylor,

Please see the attached correspondence related to the above captioned-matter, in response to your letter of November 7, 2017.

Best regards,

Stephen M. Pezzi

Trial Attorney

United States Department of Justice

Civil Division - Federal Programs Branch

20 Massachusetts Avenue NW

Washington, DC 20530

[\(202\) 305-8576](tel:(202)305-8576) | stephen.pezzi@usdoj.gov